

(2) A nonimmigrant alien applying for admission at a land border Port-of-Entry as a Visa Waiver Pilot Program applicant pursuant to §217.2(c) or §217.3(c) of this chapter must remit the required fee for issuance of Form I-94W upon determination of admissibility.

(3) A Mexican national in possession of a valid nonresident alien border crossing card or nonimmigrant B-1/B-2 visa who is required to be issued Form I-94, Arrival/Departure Record, pursuant to §235.1(f) of this chapter, must remit the required fee for issuance of Form I-94 upon determination of admissibility.

(4) A citizen or lawful permanent resident alien of the United States, Canadian national, or lawful permanent resident of Canada having a common nationality with Canadians, who requests Form I-68, Canadian Border Boat Landing Permit, pursuant to §235.1(e) of this chapter, for entry to the United States from Canada as an eligible pleasure boater on a designated body of water, must remit the required fee at time of application for Form I-68.

(5) A Canadian national or a lawful permanent resident of Canada having a common nationality with nationals of Canada, who submits Form I-175, Application for Nonresident Alien Canadian Border Crossing Card, must remit the required fee at time of application for Form I-185.

(6) A Mexican national who submits Form I-190, Application for Nonresident Alien Mexican Border Crossing Card, for replacement of a lost, stolen, or mutilated Form I-586, Nonresident Alien Border Crossing Card, must remit the required fee at time of application for a replacement Form I-586.

[60 FR 40069, Aug. 7, 1995, as amended at 62 FR 10390, Mar. 6, 1997]

## PART 287—FIELD OFFICERS; POWERS AND DUTIES

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### § 287.1 Definitions.

(a)(1) *External boundary*. The term *external boundary*, as used in section 287(a)(3) of the Act, means the land boundaries and the territorial sea of the United States extending 12 nautical miles from the baselines of the United States determined in accordance with international law.

(2) *Reasonable distance*. The term *reasonable distance*, as used in section 287(a)(3) of the Act, means within 100 air miles from any external boundary of the United States or any shorter distance which may be fixed by the district director, or, so far as the power to board and search aircraft is concerned any distance fixed pursuant to paragraph (b) of this section.

(b) *Reasonable distance; fixing by district directors*. In fixing distances not exceeding 100 air miles pursuant to paragraph (a) of this section, district directors shall take into consideration topography, confluence of arteries of transportation leading from external boundaries, density of population, possible inconvenience to the traveling public, types of conveyances used, and reliable information as to movements of persons effecting illegal entry into the United States: *Provided*, That whenever in the opinion of a district director a distance in his district of more than 100 air miles from any external boundary of the United States would because of unusual circumstances be reasonable, such district director shall forward a complete report with respect to the matter to the Commissioner, who may, if he determines that such action is justified, declare such distance to be reasonable.

(c) *Patrolling the border*. The phrase *patrolling the border to prevent the illegal entry of aliens into the United States* as used in section 287 of the Immigration and Nationality Act means conducting such activities as are customary, or

reasonable and necessary, to prevent the illegal entry of aliens into the United States.

(d) *Arrested by federal, state, or local law enforcement official.* The term *arrested*, as used in section 287(d) of the Act (as amended by section 1701 (Subtitle M) of the Anti-Drug Abuse Act of 1986, Pub. L. 99-509), means that an alien has been—

(1) Physically taken into custody for a criminal violation of the controlled substance laws; and

(2) Subsequently booked, charged or otherwise officially processed; or

(3) Provided an initial appearance before a judicial officer where the alien has been informed of the charges and the right to counsel.

(e) *Law enforcement or other official.* The phrase *law enforcement official (or other official)*, as used in section 287(d) of the Act, and §242.2(a) of this part means an officer or employee of an agency engaged in the administration of criminal justice pursuant to statute or executive order, including (1) courts; (2) a government agency or component which performs the administration of criminal justice as defined in 28 CFR part 20 including performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(f) *Controlled substance.* The term *controlled substance*, as used in section 287(d)(3) of the Act, shall mean the same as that referenced in the Controlled Substances Act, 21 U.S.C. 801 *et seq.*, and shall include any substance contained in Schedules I through V of 21 CFR 1308.1 *et seq.* For the purposes of this chapter, the term *controlled substance* includes controlled substance analogues as defined in 21 U.S.C. 802(23) and 813.

(g) *Basic immigration law enforcement training.* The phrase *basic immigration law enforcement training*, as used in §§287.5 and 287.8 of this part, means the successful completion of one of the following courses of training provided at the Immigration Officer Academy or Border Patrol Academy: Immigration Officer Basic Training Course after 1971; Border Patrol Basic Training

Course after 1950; and Immigration Detention Enforcement Officer Basic Training Course after 1977; or training substantially equivalent thereto as determined by the Commissioner with the approval of the Deputy Attorney General. The phrase *basic immigration law enforcement training* also means the successful completion of the Other than Permanent Full-Time (OTP) Immigration Inspector Basic Training Course after 1991 in the case of individuals who are OTP immigration inspectors. Conversion by OTP immigration to any other status requires training applicable to that position.

[22 FR 9808, Dec. 6, 1957, as amended at 29 FR 13244, Sept. 24, 1964; 53 FR 9283, Mar. 22, 1988; 57 FR 47258, Oct. 15, 1992; 59 FR 42415, Aug. 17, 1994]

#### § 287.2 Disposition of criminal cases.

Whenever a district director or chief patrol agent has reason to believe that there has been a violation punishable under any criminal provision of the laws administered or enforced by the Service, he or she shall immediately initiate an investigation to determine all the pertinent facts and circumstances and shall take such further action as he or she deems necessary. In no case shall this investigation prejudice the right of an arrested person to be taken without unnecessary delay before a United States magistrate judge, a United States district judge, or, if necessary, a judicial officer empowered in accordance with 18 U.S.C. 3041 to commit persons charged with offenses against the laws of the United States.

[59 FR 42415, Aug. 17, 1994]

#### § 287.3 Disposition of cases of aliens arrested without warrant.

(a) *Examination.* An alien arrested without a warrant of arrest under the authority contained in section 287(a)(2) of the Act will be examined by an officer other than the arresting officer. If no other qualified officer is readily available and the taking of the alien before another officer would entail unnecessary delay, the arresting officer, if the conduct of such examination is a part of the duties assigned to him or her, may examine the alien.

(b) *Determination of proceedings.* If the examining officer is satisfied that